Supreme Court, U. S.
FILED
JUN 20 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1662

UNITED STATES OF AMERICA,

Appellant,

v.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

MOTION TO AFFIRM

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June 13, 1977

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TABLE OF CONTENTS

	Page
STATEMENT	1
ARGUMENT	5
CONCLUSION	14
CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

Cases:

Allen v. State Board of Education, 393 U.S. 544, 22 L.Ed.2d 1, 89 S. Ct. 817 (1969) 11

Caminetti v. United States, 242 U.S. 470, 61 L.Ed. 442, 37 S. Ct. 192, 194 (1917) 6

Campbell v. Brown, 245 F.2d 662 (5th Cir. 1957) 12

Darden v. City of Hueytown, N.D. Ala. No. 76-P-1126-S 13

Helvering v. Elkins, 58 S. Ct. 379, 82 L.Ed. 431, 402 U.S. 573 12

Helvering v. Reynolds, 61 S. Ct. 971, 85 L.Ed. 1438, 313 U.S. 428 12

Jenness v. Little, 306 F. Supp. 925 13

Perkins v. Mathews, 400 U.S. 379, 27 L.Ed. 476, 91 S. Ct. 431 (1971) 14

United States v. Missouri Pacific RR, 49 S. Ct. 133, 73 L.Ed. 322, 78 U.S. 269 12

Woodard v. Lanier, et al., N.D. Ala. No. CA 74-H-752-S 13

Statutes:

Supreme Court Rule 16 1

28 U.S.C. §2284 2

Voting Rights Act

Section 5, 42 U.S.C. §1973 C 2

Section 14, 42 U.S.C.A. §1973 *l*(C)(2) 5,6,7,8,12,14

	Page
Code of Alabama 1940	
Title 17, § 21 (Recomp. 1958)	5
Title 37 (Recomp. 1958)	2
Title 37, § 34 (34) (Cum. Suppl. 1973)	6
Title 37, § 426	12
Ga. Code Ann. § 34 A-502	10
Other Authorities:	
Federal Register, Aug. 7, 1965, p.9897	11
Sands, *Sutherland Statutory Construction*, Sec. 46.01 (1973)	6
1965 U.S. Code of Cong. & Admin. News, p. 2569; 2464	7

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the district court be affirmed on the ground that the questions are unsubstantial and do not warrant further argument.

STATEMENT

This is a direct appeal from the final judgment and decree enter on December 13, 1976, by a district court of three

judges specially constituted pursuant to 42 U.S.C. §1973c and 28 U.S.C. §2284, denying appellant's application for an injunction to enjoin a city election in Sheffield, Alabama, on August 10, 1976, and dismissing appellant's complaint.

This litigation concerns an election of a mayor, president of the city council and eight councilmen under a mayor-council form of government in Sheffield, Alabama. Sheffield is a small town with a population of approximately 13,000. It is located in Colbert County, Alabama, and the county fully handles the registration of all voters in the county, including voters in Sheffield. This is done through the County Board of Registrars which is in accordance with the state law of Alabama. Sheffield does not register voters.

The town was incorporated in 1885 by the Alabama Legislature under a mayor-council form of government, and it retained this form of government until 1912 when the voters decided to change to a commission form of government. Three commissioners were elected from the town at large. The commission form of government was continually in effect from 1912 until August 10, 1976, when the town returned to a mayor-council government as the result of a special referendum conducted on May 13, 1975, in which a majority of the citizens voted in favor of changing the form of government.

Title 37 of the Code of Alabama contains the basic state statutes which govern the creation, organization and functioning of cities in the state of Alabama. Title 37 §426 Code of Alabama 1940 (Recomp. 1958) provides that in cities of 12,000 to 20,000 population with a mayor-council form of government, two aldermen are elected at large from each ward, and a mayor and president of the council are likewise elected at large. The most recent federal census shows Sheffield's population as 13,115. Consequently, Sheffield was required by state law to elect its council members at large. Pursuant to the provisions of Alabama law following the referendum on May 13, 1975, the town was divided into four wards of near equal population as follows:

Ward	*Population*	*Black*	*White*
1	3,307	50	3,257
2	3,245	2,222	1,023
3	3,188	254	2,934
4	3,375	0	3,375
Total	13,115	2,526	10,589

From these figures it is noted that only 19 percent of the city population is black. Black citizens have historically voted in the city, and there was no substantial increase in the number of registered black voters in the city following the adoption of the Voting Rights Act.

It is also noteworthy that during the history of Sheffield, no black citizen had ever been a candidate for public office until the town decided to return to the mayor-council form of government, and held its election on August 10, 1976. Four black citizens qualified to run for council seats. In one race a black candidate received 47 percent of the total vote cast (black citizens compose only 19 percent of the total population of Sheffield) although he lost. In a separate race a black candidate was in a run-off against a white candidate, and the black candidate won the election. Sheffield has always enjoyed an excellent relationship between its white and black citizens, and was one of the first, and possibly the first, town in Alabama to integrate its school system which it did voluntarily several years prior to the majority of other towns and prior to the advent of the Voting Rights Act. Black citizens participate fully in the governmental process in Sheffield and have representatives on or in most all boards and departments.

By letter of March 20, 1975, the city advised the Attorney General of the United States of the proposed referendum for a change in the form of government. The city did not feel that the Voting Rights Act applied, but the letter was written out of an abundance of precaution, and this was so stated in the letter. The Attorney General did not object at that time or any time prior to the referendum. It was not until May 23, 1975, ten days after the referendum, that the Attorney

General next wrote, and even then he did not object to the referendum, but sought to retain the right to object any time in the future should he so desire.

Officials of the City of Sheffield were in telephone contact with attorneys in the Justice Department between March 20, 1975, and May 13, 1975, the date of the referendum, and were in frequent contact with the same attorneys from then until July 6, 1976, and at no time did the Justice Department indicate that it had any objections to Sheffield's change of government. There were only two letters received from the Justice Department after its letter of May 23, 1975, until the scheduled election on August 10, 1976. It was not until July 6, 1976, approximately 30 days prior to the election and after the town and candidates had gone to great expense, that the Attorney General advised the city as follows:

> "In reference to the proposed method of electing councilmen under the new form of government, the Attorney General has no objection to the proposed district lines or to the at-large election of the mayor and the president of the council. We are, however, unable to conclude that the at-large election of councilmen required to reside in districts will not have a racially discriminatory effect. Recent court decisions, to which we feel obligated to give great weight, indicate that the use of residency requirements, numbered posts, and a majority vote requirement in the context of at-large elections has the potential for abridging minority voting rights."

Under Alabama law, Sheffield was compelled to have its form of government changed pursuant to the referendum mandating the change, including the election of council members "at large," and the Attorney General's office was fully aware of this law even before the referendum was held on May 13, 1975. The municipal election was scheduled for August 10, 1976, in accordance with state law; the Attorney General filed suit to enjoin the election on August 9, 1976. After a hearing on the merits, the district court denied the injunction and dismissed appellant's complaint. The final

order of the district court was entered on December 13, 1976.

ARGUMENT

The decision of the district court is plainly correct. The issues in this case are uniquely narrow, and no amount of strained semantics or legal gymnastics can convert it into a matter warranting review by this court, and the decision of the lower court should be summarily affirmed.

Section 5 of the Voting Rights Act (hereinafter called the Act), 42 U.S.C.A. 1973c provides the preclearance procedure for certain anticipated changes in voting practices by designated states or "political subdivisions." This section provides as follows:

> "Whenever a State or political subdivision with respect to which the prohibitions set forth in Section 4(a) based upon determinations made under the first sentence of Section 4(b) are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on . . ."

Section 14 of the Act, 42 U.S.C.A. 1973 *l*(c)(2), provides:

> "The term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a state which conducts registration for voting."

Manifestly, the City of Sheffield is not a "political subdivision" within the above-stated definition. The City of Sheffield, as a municipal corporation under existing Alabama law, has no authority to supervise or conduct voting registration. The Alabama Legislature has specifically designated the County Boards of Registrars of the several counties solely and exclusively as the registrars of voters in this state. Title 17, §21, Code of Alabama (Recomp. 1958);

see also Title 37, §34(34) Code of Alabama (Cum. Suppl. 1973).

Therefore, since in Alabama registration for voting is conducted under the supervision of the county, and only under the supervision of the county, then the City of Sheffield is not included within the definition of the term "political subdivision" found in Section 14 of the Act.

To reach this conclusion, no tortured construction of the statute is required. On the contrary, the application of well established rules of statutory interpretation directly supports this conclusion.

The Supreme Court of the United States has declared that "the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States,* 242 U.S. 470, 61 L.Ed. 442, 37 S.Ct. 192, 194 (1917). The court further said that . . . "where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." *Id.* This rule is widely known as the plain meaning rule and is frequently encountered in judicial decisions. See *Sands, Sutherland Statutory Construction,* Sec. 46.01 (1973) and cases collected therein. Under this rule, if the statutory language is plain, unambiguous and uncontrolled by other parts of the Act or other acts upon the same subject, the court cannot give it a different meaning. Obviously, statutory definitions control the meaning of statutory words. The statutory language in Section 14 is straightforward; no attempt is made to define the term "political subdivision" in any other portion of the Act or in any other related act. Applying the plain meaning rule of statutory interpretation, the definition of political subdivision in the Act may not judicially be expanded to embrace the City of Sheffield.

In our case the Act is not ambiguous and the construction placed on the Act by the Department of Justice is plainly erroneous.

The legislative history of Section 14 of the Act makes it clear that this section was intended as a restriction on the coverage of the Act.

> "Clause (2) of this subsection is new. It defines 'political subdivision' as a county or parish except that in those instances where registration is not conducted under the supervision of a county or parish, the term includes any other subdivision of a State *which conducts registration for voting.* This definition makes clear that the term 'political subdivision' is not intended to encompass precincts, election districts, or other similar units when they are within a county or parish which supervises registration for voting." *1965 U.S. Code Congressional and Administrative News,* p. 2569; see also p. 2464. (emphasis added)

H.R. 6400 was the voting rights bill drafted by the Department of Justice during the Johnson administration and was offered in the House of Representatives by Hon. Emanuel Celler (Chairman of said Subcommittee). At the hearings before said Subcommittee on said bill held in March of 1965, Hon. Nicholas Katzenbach, Attorney General of the United States, was the first witness, and it was his testimony that explained H.R. 6400 to the Subcommittee. "Political subdivisions" were not defined in H.R. 6400 as originally drafted and the questions to him showed what was the intended meaning by that phrase. This testimony resulted in a request by Representative Tenzer that H.R. 6400 be amended to define the term "political subdivisions."

> "Mr. Tenzer. Thank you, Mr. Chairman. I just have one question. Since you agree to define in the law the term 'election,' would you also agree to define the term 'political subdivision', so there would be no question about that *as one that regularly maintains a system for registering voters*?
>
> Mr. Katzenbach. I think it might be a good idea to define political subdivision. I think the committee ought to consider giving it consideration." (p. 121) (emphasis added)

This amendment of H.R. 6400 took the form of Section 14(c)(2) of the Act. 42 U.S.C.A. §1973 *l*(c)(2). Also, it is important to note that Mr. Katzenbach's testimony shows absolutely no question on his part that the meaning of "political subdivisions" was to encompass those areas responsible for registering voters, and it was not intended to go any farther down the scale. In fact, Mr. Katzenbach acknowledged that he knew that "political subdivisions" only covered *counties* in Alabama. The Katzenbach-Subcommittee colloquy found in the transcript of the hearings before said Subcommittee is as follows:

"The Chairman. The bill also refers to 'political subdivisions.' How far down the political scale does that go?

Mr. Katzenbach. I believe that the term 'political subdivision' used in this bill is intended to cover the registration area and that the whole bill really is aimed at getting people registered.

Mr. Chairman. For example, in New York we have what is called an assembly district where the representatives of the lower house of the State legislature are elected. Such assembly districts are then broken down into election districts. I take it that an election district would be deemed a political subdivision?

Mr. Katzenbach. I think that is possible, Mr. Chairman, but, frankly, you are more familiar with how registration is accomplished in New York than I am. *I know how it is accomplished or not accomplished in Alabama.*

Mr. Chairman. What would be the lowest possible political unit in the scale?

Mr. Katzenbach. What is the area in which registration is done in New York? I am not familiar with that, Mr. Chairman.

The Chairman. In New York, it is the so-called election district, but what would it be in some of the States that would be affected here?

Mr. Katzenbach. Throughout the affected States, in the South, it is a county or parish under the present law; parish in Louisiana." (p. 21) (emphasis added)

"Mr. McCulloch . . . If in the State of New York in 1964 there was a political subdivision where less than 50 percent of the people voted or were registered to vote, wouldn't that trigger this bill in that political subdivision in the State of New York?

Mr. Katzenbach. I think it could, Congressman. I think the only way in which we can gather valid statistics here is really—we are aiming at voter registration and *I think the term 'political subdivision' is used here aimed primarily at the area in which the registration process takes place.*" (p. 51) (emphasis added)

"Mr. Rogers. Section 4(a), provided that when the Attorney General certifies that he has received the complaints in writing from 20 or more residents of a political subdivision * * * what do you interpret as a political subdivision in that case?

Mr. Katzenbach. I believe the political subdivision there means the same thing as it means in Section 3, Congressman." (p. 53)

"Mr. Cramer. In every city or political subdivision in every county?

Mr. Katzenbach. *Political subdivision, as I attempted to say, in my judgment means that area for which people are registered and within which a registrar board operates. It is called different names in different States.* That is the reason for using the term 'political subdivision,' but it is meant to be coincidental with the area under the supervision of a board of registration or election." (p. 78) (emphasis added)

"Mr. Gilbert . . . Mr. Attorney General, I don't wish to belabor the point, about political subdivision, but in the State of New York there is a problem which would concern political subdivisions and I would like to have a definite statement from you on political subdivisions.

Mr. Katzenbach. All right Congressman, I'll be happy to provide that.

Mr. Gilbert. I wonder if we could have it on the record today, or would you prefer to provide that at a later date?

Mr. Katzenbach. I attempted to make my general statement as to what a political subdivision is but I cannot apply that to New York without knowing more than I do about how the registration works.

Mr. Gilbert. In New York, we have a City Board of Elections and they have offices in each county. Also, as the chairman pointed out earlier in the hearing, I believe it was yesterday, we have assembly districts in which a person is elected to the New York State Legislature. We also have in these assembly districts election districts where there are registrars or members appointed by the Board of Elections to register people.

Now, that small compact unit of election districts, would that be considered a political subdivision?

Mr. Katzenbach. Is each of these election districts run as a separate area for purposes of registration?" (p. 120)

Thereafter at page 121 of the transcript of said hearings follows the above quoted testimony relative to establishing a definition in the Act for "political subdivisions."

The Department of Justice devotes considerable wordage in its jurisdictional statement to certain statements by Senator Herman Talmadge of the State of Georgia as supportive of its position. It must be kept in mind that Senator Talmadge's state did have voter registration by cities at the time he made the quoted statement. See *Ga. Code Ann.* §34A-502. Therefore, Georgia's cities were covered by the Act. It is our understanding that Georgia recently changed its law and that cities do not presently conduct voter registration. The Department of Justice has not accepted the fact that voter registration is conducted differently in the various states. Mr. Katzenbach and the Department of Justice knew at the time the Act was introduced that in Alabama the cities do not register voters, but that they are registered by the counties. He specifically discussed this at the hearings before the House Subcommittee. Therefore, appellees contend that the various reports of the Attorney General or the Department of Justice to the Congress have been misleading in assuming application of the Act to cities in Alabama. The Department of Justice,

as the drafter of the Voting Rights Act, knew its limitations better than anyone, and if it has been applied to cities in Alabama, it was erroneously done so. There was never any jurisdiction to apply the Act to a city which is not responsible for registering voters, and if this point had been properly raised, the cases should have been dismissed.

The Voting Rights Act and its history are crystal clear. Cities in Alabama are not subject to the preclearance provisions under Section 5 of the Act. The Department of Justice's argument that state coverage includes every political body within such state is not in conformity with the law, with the clear and unambiguous language of the Act or the legislative history. For some unknown reason the Department of Justice equates the way the "Attorney General has consistently interpreted the Act" with law. The expansion of the Act which began with *Allen v. State Board of Education*, 393 U.S. 544, 22 L.Ed.2d 1, 89 S.Ct. 817 (1969), was further extrapolated by the Department of Justice in its contentions in this case, that is, the Department of Justice equated the Attorney General's interpretation to law, all under the guise of doing "what is right." The Attorney General is requesting this court to enforce an idea or theory diametrically opposed to a legislative act.

Several states, including Alabama, were listed by the Attorney General in the *Federal Register* dated August 7, 1965, on page 9897, as provided by the Voting Rights Act, and several political subdivisions of states were listed by the Director of the Census. Nowhere is Sheffield, Alabama, listed however. If it had been intended that every political subdivision in a listed state was also covered by the Act, the Act could have so stated, but it does not. It would have been a simple matter for the drafters of the Act to have inserted an additional sentence such as "In any instance where the Act applies to a state, every political subdivision within the state is included." Nowhere, however, does such a sentence appear, but to the contrary the phrase "political subdivision" is specifically defined in Section 14(c)(2), 42 U.S.C.A.

1973 *l*(c)(2), as meaning only counties (in the case of Alabama) since the registration of voters is conducted under the supervision of counties in Alabama.

The Department of Justice argues as a rule of statutory construction that the reenactment of a statute of Congress in the face of administrative construction is persuasive of a legislative recognition and approval of the statute as thus construed. At best, the reenactment of a statute is a nebulous foundation for statutory construction since it is merely one factor in the total effort to give fair meaning to language. The rule offered by the Department of Justice is no more than an aid in statutory construction, useful at times in resolving statutory ambiguities. *Helvering v. Reynolds*, 61 S.Ct. 971, 85 L.Ed. 1438, 313 U.S. 428, *United States v. Missouri Pacific RR*, 49 S.Ct. 133, 73 L.Ed. 322, 78 U.S. 269, and *Campbell v. Brown*, 245 F.2d 662 (5th Cir. 1957). The reenactment of a statute which has been construed by the Department of Justice is not an adoption of such construction unless the prior statute was itself ambiguous. *Helvering v. Elkins*, 58 S.Ct. 379, 82 L.Ed. 431, 402 U.S. 573. Moreover, the rule applies only where the construction by the Department of Justice is not plainly erroneous. *United States v. Missouri Pacific RR*, supra.

As stated before in this argument, the Act is not ambiguous, has never been ambiguous, and the construction placed on the Act by the Department of Justice is plainly erroneous.

The lower court was of the further opinion, and the appellees feel rightfully so, that by approving the referendum to change the form of government that the Attorney General in fact approved the change to the mayor-council form of government notwithstanding his caution to the town that the change also was subject to preclearance. Prior to his approval of the referendum, the Attorney General knew of the provision of Title 37 §426, Code of Alabama 1940 (Recomp. 1958) which provides for the "at large" election of council members. He knew that if the voters approved the change in

form of government that the city would be obliged under state law to hold elections to elect a mayor, president of the city council and council members, all at large, and there was no way anyone could halt the election once it reached this stage. His approval of the referendum therefore was an implicit approval of the new government.

By approving the referendum, the Attorney General terminated his authority under the Act to continue to oversee the results of the "change" which he had already approved. See *Jenness v. Little*, 306 F. Supp. 925. In effect, the Attorney General has sought in this case to object to specific effects of the referendum which he had already approved, which effects are required under Alabama law, and which effects he knew would take place when he approved the referendum initially. The Attorney General has terminated and exhausted his authority under the Voting Rights Act to further oversee the consequences of his approval.

The government takes the position on page 17 of its jurisdictional statement that the decision in this case conflicts with the decisions of other three-judge district courts. So far as the appellees have been able to determine, it was never raised as a defense in any of those cases that cities which do not register voters are not covered by the Act. The government cites two cases from the United States District Court for the Northern District of Alabama as authority for its position, *Woodard v. Lanier, et al.* N.D. Ala. No. CA 74-H-752-S, and *Darden v. City of Hueytown*, N.D. Ala. No. 76-P-1126-S. In the *Woodard case* the defendants admitted and stipulated that the City of Bessemer was covered by the Act. The Department of Justice attorneys also tried very hard to get the appellees in this case to stipulate that Sheffield was covered by the provisions of the Act. Appellees refused to so stipulate, because it was never felt or believed that the Act applied to the town of Sheffield.

It is noteworthy that one of the three judges sitting on the panel which heard the *Darden case* also was a member of the panel which heard the instant case. If the argument had been

made that the City of Hueytown was not a "political subdivision" within the meaning of the Act, he certainly would have been aware of it.

If there had been any reported decisions, or any decisions anywhere that "nonregistering cities" are included in the definition of "political subdivisions" or are covered by the provisions of the Voting Rights Act, certainly the government would have cited them to the district court in this case, but no such citations were made. The case of *Perkins v. Mathews*, 400 U.S. 379, 27 L.Ed. 476, 91 S.Ct. 431 (1971), is not applicable to this decision; the defense raised in the instant case could not have been raised in *Perkins*, because the city involved in that case, Canton, Mississippi, did register voters, and therefore, did fall within the definition of "political subdivision" found in Sec. 14 of the Act, 42 U.S.C.A. 1973 *l*(c)(2).

CONCLUSION

For the foregoing reasons it is respectfully submitted that the appellant has presented no substantial question for the decision of this court, and that the judgment and decree of the district court should be affirmed.

Respectfully submitted,

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June 13, 1977

CERTIFICATE OF SERVICE

I hereby certify that the foregoing motion to affirm has been served on Messrs. Wade H. McCree, Jr., Drew S. Days, III and Walter W. Barnett, and Ms. Judith E. Wolf, attorneys of record for appellant, by mailing copy of said motion to each of them, postage prepaid and properly addressed.

This the 13th day of June, 1977.

BRAXTON W. ASHE
Of Counsel for Appellees